

most likely to survive any legal challenges to State and federal actions taken pursuant to the agreement.

- State and EPA actions comply with procedural and substantive requirements of the federal Administrative Procedure Act (APA) and analogous State laws, including that decisions are adequately supported by their administrative records.
- The State's and EPA's actions work in tandem to achieve the desired outcomes in a step-wise coordinated fashion through parallel administrative proceedings. As proposed by EPA, this structured process culminates in EPA's withdrawal of prior regulatory actions based upon, and justified by, the State's adoption and EPA's approval of the State's site-specific criteria protective of sustenance fishing for waters currently covered by the federal criteria. A sustainable withdrawal of prior actions therefore entails state adoption of criteria that are geographically co-extensive with the waters currently covered by the federal criteria (i.e., reservation and trust waters for the Northern and Southern Tribes).
- The Agreement contains mechanisms to provide adequate assurance that the State and EPA they will carry out the actions committed to in the Agreement.

- **Proposed Terms:**

- State and EPA actions resulting in State's site-specific human health criteria becoming the approved applicable water quality standards under the CWA protective of tribal sustenance fishing:
 - After enactment of any necessary authorizing legislation and shortly after Maine publishes a proposed rule with site-specific human health criteria based on EPA's national default FCR of 142 g/day for sustenance fishing and a scientifically defensible methodology for deriving human health criteria, EPA proposes withdrawal of its federally promulgated human health criteria for the waters covered by the State's proposed rule;
 - The preamble to EPA's proposed withdrawal rule would state that if Maine adopts scientifically defensible site-specific human health criteria based on a FCR of 142 g/d or greater, EPA will withdraw (1) its prior approval of MIA as a designated use under the CWA; (2) its prior approval of the State's fishing designated use as including an explicit sustenance fishing use; and (3) the Administrator's determination under section 303(c)(4)(B) of the CWA;

- After the State completes its regulatory adoption and legislative approval process and submits approvable site-specific HHC based on a FCR of 142 g/day or greater, and after consideration of public comment, EPA will approve the State's general fishing designated use and site-specific human health criteria, withdraw the federally promulgated HHC for waters covered by the State's site-specific human health criteria, and withdraw EPA's prior use designation approval actions and Administrator's determination (EPA's prior disapproval action would not need to be expressly withdrawn, as it will have been superseded by EPA's approval of the State's site-specific criteria).
- In order for EPA to have a sound and defensible legal and technical basis to withdraw its prior actions in full, the State's site-specific criteria would need to apply to all the waters covered by the current federal criteria (i.e., reservation and trust waters for the Northern and Southern Tribes).

o Form of Agreement

- Settlement Agreement or Consent Decree, to be determined consistent with policies of the U.S. Department of Justice.
- Case held in abeyance or dismissed without prejudice pending completion of the above actions.